

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

SALVATORE BATTAGLIA

§

VS.

§

CIVIL ACTION NO. 5:09cv49

KEITH ROY

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Salvatore Battaglia, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable orders of this court. The magistrate judge has submitted a Report and Recommendation recommending the petition be dismissed without prejudice for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the records, pleadings and all available evidence. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections. After careful consideration, the court is of the opinion the objections are without merit. Petitioner has failed to demonstrate that exhausting administrative remedies would be futile in his case.

Further, even if petitioner were not required to exhaust his administrative remedies, he would still not be entitled to relief. Petitioner states the Bureau of Prisons should transfer him to a community correctional center for the remainder of his sentence. Title 18 U.S.C. § 3624(c)(1) requires the Bureau to ensure, to the extent practicable, that a prisoner spends a portion of the final months of his term of imprisonment under conditions that allow the prisoner an opportunity to adjust to reentry. These conditions may include placement in a community correctional facility. However, the statute limits to 12 months the amount of time a prisoner may spend in such a facility. According to the website operated by the Bureau of Prisons, petitioner will not

complete his term of imprisonment until December 22, 2012. As petitioner has more than 12 months remaining in his term of imprisonment, he is not entitled to the relief he seeks.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment shall be entered dismissing the petition.

SIGNED this 26th day of October, 2009.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE